

RESOLUTION NO.

THE WICHITA BUSINESS INCENTIVE POLICY

A RESOLUTION FOR GRANTING AD VALOREM TAX ABATEMENTS AS AN INCENTIVE FOR BUSINESS DEVELOPMENT AND EXPANSION IN WICHITA, KANSAS

WHEREAS, Section 13 of Article 11 of the Kansas Constitution authorizes the governing body of any city to grant property tax exemptions for certain economic development purposes (“EDX exemptions”); and

WHEREAS, K.S.A. 79-201a *Second* authorizes the governing body of any city to grant property tax exemptions for any property, not used in any retail enterprise, which is constructed or purchased with the proceeds of industrial revenue bonds issued under the authority of K.S.A. 12-1740 *et seq.* (“IRB exemptions”); and

WHEREAS, the Wichita City Council has determined that under certain circumstances the granting of IRB and EDX property tax exemptions can be an effective economic development tool; and

WHEREAS, state statutes require that the governing body develop and adopt official policies and procedures prior to granting such EDX exemptions; SO NOW, THEREFORE,

BE IT RESOLVED by the governing body of the City of Wichita, Kansas:

Section 1. Purpose. The purpose of these provisions is to establish the official policies and procedures of the City of Wichita for the granting of EDX and IRB property tax exemptions for real and tangible personal property used for qualified economic development purposes.

Section 2. Authority and Discretion. The authority to grant tax exemptions within the City of Wichita is vested solely in the Wichita City Council. The Wichita City Council is under no obligation to approve any requested exemption and reserves the right to deviate from the policies and criteria contained herein if circumstances exist to warrant such deviation. Such circumstances may include, but not be limited to: (1) economic development projects which, due to their unusual nature or magnitude, offer extraordinary benefits to the community, and (2) projects which are essentially local in nature and do not enhance the local economy by importing new wealth into the community.

Section 3. Notice and Hearing. Prior to granting a tax exemption, a public hearing shall be held by the Wichita City Council. Notice of the public hearing shall be published at least once seven (7) days prior to the hearing and shall indicate the purpose, time and place thereof. The City Clerk shall also notify in writing the governing body of Sedgwick County and the appropriate unified school district,

depending upon the location of the project.

Section 4. Criteria and Conditions for Granting Exemption. Each application for property tax exemption shall be evaluated in accordance with the following criteria:

A. Demonstration of Economic Benefit. The City Council may consider granting said tax exemption only upon clear and factual demonstration of direct economic benefit. The project shall create additional permanent full-time equivalent jobs, increase private capital investment in new plant and/or equipment and import new wealth into the community.

B. Preservation of Existing Tax Base. It is the intent of this policy to promote expansion of the tax base and ensure that the taxing districts having authority to levy taxes on the property affected will receive, in the future, not less than the amount received prior to granting the exemption except in situations where an existing building is vacant and is acquired by a new owner who otherwise qualified for an abatement.

C. Eligible Businesses. In accordance with Article 11 of the Kansas Constitution, an EDX tax exemption will be considered only for businesses engaged in the following activities:

1. Manufacturing articles of commerce as defined by the Standard Industrial Classification Manual which describes manufacturers as "establishments engaged in the mechanical or chemical transformation of materials or substances into new products;" or

2. Conducting research and development relative to the manufacturing of a product; or

3. Storing goods or commodities which are sold or traded in interstate commerce. Storage facilities of a business seeking an EDX exemption must be permanent improvements to the land and not moveable containers such as trucks, semi-trailers or railroad cars.

D. Eligible Property. The City Council may exempt from ad valorem taxation all or any portion of the appraised valuation of:

1. All newly constructed buildings or additions to existing buildings used exclusively for eligible business activities which are necessary to facilitate the formation of a new business or expansion of an existing business if, as a result of such formation or expansion, new employment is created.

2. All newly acquired or existing tangible personal

property used exclusively for eligible business activities, except that no existing tangible personal property located in the state of Kansas may be granted an exemption unless said exemption is required, based on a factual determination, to retain jobs in the state of Kansas. Personal property not utilized in the production process such as office equipment, motor vehicles, tractors, fork-lifts, etc. shall be ineligible for exemption.

No exemption will be granted for the land upon which qualified buildings or building additions are located, existing buildings already built (unless such building has been vacant for a minimum of six months and is being acquired/occupied by a new tenant having no fiscal or legal relationship with the former occupant or property owner; or unless the new business is appreciably different than the old use and will create in excess of 50 new jobs), or any property rented or leased to outside interests by other than a not-for-profit local economic development corporation. No exemption will be granted for buildings or building additions for which a building permit has been applied or construction commenced before the date said exemption is granted. No exemption will be granted for any existing tangible personal property located in the City of Wichita nor any newly acquired tangible personal property ordered or purchased prior to the date said exemption is granted. No EDX exemption will be granted for any leased property unless the lessor and lessee are related parties in which at least 51% of the lessee is owned by the lessor or 51% of the lessor is owned by the lessee.

D. Conditions for Approval. As a condition precedent to the approval by the City of the tax exemption authorized under Article 11 of the Kansas Constitution, an agreement shall be entered into between the City and the business seeking the tax exemption, in a form approved by the City Attorney, which includes the following conditions:

1. Agreement that, prior to the adoption of an ordinance granting tax exemption, the applicant will have an approved Equal Employment Opportunity/Affirmative Action Plan on file with the City.

2. Agreement to include in ordinance provisions requiring the applicant to comply with the ordinances of the City, as then exist or as may thereafter be adopted, pertaining to civil rights and equal employment opportunity, as required by Section 2.12.950 of the Code of the City of Wichita.

3. If the project involves new construction, substantial renovation or landscaping, an agreement to provide the City with documented evidence that the applicant used procedures, prior to the granting of tax exemption, that do not exclude qualified Minority-owned Business Enterprises (MBE) and Women-owned

Business Enterprises (WBE) from serving as contractors, subcontractors, engineers, architects, suppliers and vendors on the proposed exempt project.

4. If the project involves substantial new construction, or renovation or landscaping materially impacting water usage, an agreement that, prior to the granting of tax exemption, the applicant will have obtained approval from City staff of a proposed water conservation plan.

5. If the project involves new construction, substantial renovation or landscaping, an agreement to submit building and site plans to the Public Art and Design Board for review, and to modify the proposed design as necessary to comply with reasonable Board recommendations or conditions.

6. An agreement to cooperate with any annual compliance audit procedure(s) the City may adopt to monitor compliance with conditions, including any annual reports required of the applicant and any inspections of the applicant's premises or interviews with the applicant's staff.

7. A commitment to achieve and maintain its proposed employment goals, and to meet its Equal Employment Opportunity/Affirmative Action goals, during the term of the tax exemption, subject to a revocation of any tax exemption or imposition of payments in lieu of taxes in the event the City Council finds that the applicant did not make a good faith effort to achieve such goals.

Section 5. Amount and Term.

A. Incentive Exemption. An exemption will be given up to 50% based on the following scale regarding the amount of capital investment and number of new employees:

1. New Job Creation. A tax exemption may be granted for each additional new job (FTE) as follows: 3% for the first five new positions, 1½% for six to fifteen new jobs, and 1% for each new job in excess of 15. FTE jobs are defined as those full-time employees of more than 2,000 hours per year or part-time or temporary employees consolidated to obtain the full-time equivalent of 2,000 hours per year.

2. Capital Investment. A tax exemption may be granted for each \$50,000 of investment as follows: between \$50,000 and \$500,000 - 1.0%; between \$500,000 and \$1 million - .75%;

between \$1 million and \$2 million - 0.5%; above \$2 million - 0.25%.

3. Location Premium. Businesses shall be encouraged to locate and/or expand within special redevelopment areas of the City. To foster such action, businesses may receive an additional premium equal to twenty percent (20%) for location into special redevelopment areas. The special redevelopment areas shall be designated by separate resolution of the City Council.

B. Export Premium. An additional exemption up to 50% shall relate to the total sales volume exported outside the state of Kansas, either directly or indirectly through a customer who exports. For that export percentage of the total sales, the business may receive a premium of 1% exemption for each 2% of exported sales.

For the purposes of this exemption, "export" shall mean any product, item or service which is intended for, and is in fact, sold to an end user outside the State of Kansas. Any manufactured material, product or item which is intended for use in, and is in fact, used in any finished product or item that is sold to an end user outside the State of Kansas shall be considered to be exported.

C. Descending Scale. The calculated total tax exemption will be applied according to the following scale:

	<u>Real Property</u>	<u>Personal Property</u>
Years 1 thru 5 -	100%	100%
Years 6 thru 10 -	50%	0%

D. Term of Exemption. EDX tax exemptions shall be in effect starting the first year after the calendar year in which the business commences operations or completes an expansion. IRB tax exemptions shall be in effect starting the first year after the calendar year in which the bonds which finances the property are issued. Both IRB and EDX exemptions shall be for an initial term of not more than 5 years, plus a subsequent term of not more than 5 years may be granted if a review by the City Council at the end of the initial 5-year term determines that the applicant is in compliance with the conditions upon which the grant of tax exemption was based, including but not limited to job creation, capital investment and export activities. No tax exemption granted shall be continued if the business ceases operations or ceases to be engaged in eligible business activities.

E. Payments in lieu of taxes. Any applicant receiving a tax exemption shall be required to make payments in lieu of taxes equal to the amount of

property tax not exempted. Said payments shall be payable to the Sedgwick County Treasurer for distribution, under the provisions of K.S.A. 12-148, to the general fund of all taxing subdivisions, excluding the state, which levy taxes on property where the business is situated. This apportionment shall be based on the relative amount of taxes levied by each of the applicable taxing subdivisions. An applicant may also be required to make additional payments in lieu of taxes at any time in the event of non-compliance with the conditions imposed by the City Council as part of the consideration for approval of the tax abatement.

Section 6. Preliminary Review. Prior to submittal of a formal application, a business may inquire as to eligibility for tax exemption and the anticipated amount based on preliminary employment, capital investment and export figures. The business may submit a preliminary draft application to the Economic Development Office. City staff will review the information submitted and respond to the business regarding apparent eligibility and potential amount of tax exemption if granted. The response from City staff shall in no way represent definitive findings or be seen as an expression of intent or obligation of the City Council to favorably consider or approve a formal request for tax exemption. The pre-application form and staff response shall be deemed to be proprietary business information and shall be kept confidential.

Section 7. Formal Application.

A. Filing and Processing Fees. An application for a tax exemption shall be accompanied by a filing fee of \$500 which shall be non-refundable after the application is considered by the Council, whether approved or disapproved. Said fee shall be used to defray expenses incurred in processing and evaluating the application. This fee may be adjusted annually to be consistent with the City's Cost Allocation Plan.

B. Application Contents. The City will not consider the granting of any tax exemption unless the business submits a full and complete application and provides such additional information as may reasonably be requested. The application shall contain the following:

1. Name and address of business, principal owners and officers, contact person and telephone number.
2. A general description of the nature of the business, business history and experience, a list of principal competition in the local market, a description of the processing, production techniques and/or services utilized by the business and a detailed estimate of the extent to which the business' products and/or services are exported outside of Kansas.
3. If the property is to be leased to or from a third party, a description of the lease arrangement and information sufficient to show that the lessor has a 51% or more ownership interest in the lessee, that

the lessee has a 51% or more ownership interest in the lessor, or that the lessor is a qualified community based not-for-profit economic development corporation. A copy of the lease should be provided.

3. Name and address of the owner of the land and building occupied or to be occupied by the business.
4. A general description of the proposed building project or improvements, including estimated capital costs, plus the amount or percentage of tax exemption being requested.
5. A site plan of the proposed building project or improvements.
6. If an existing business, average total monthly employment figures for the past 12 months.
7. Number of new jobs (FTE) to be created by type or position.
8. A statement describing the type of new jobs (FTE) and an estimate on wages/earnings of these jobs.
9. A statement explaining why the requested tax exemption is a critical factor in determining whether the proposed project is to be completed.

C. Cost-Benefit Analysis. As part of each application for tax exemption, an analysis will be performed on the costs and benefits accruing to the governmental entities affected by the tax exemption. The cost-benefit analysis will be conducted by the City's Economic Development Office or by an outside agent designated by the City. The applicant business shall submit such additional and detailed information as may be required by the application form for purposes of obtaining the cost-benefit analysis. The applicant will be responsible for paying any processing fee charged by the outside agent conducting the cost-benefit analysis, as approved by the City.

D. Review Procedures. Each application for tax exemption shall generally follow the following procedures:

1. The business submits a completed application and pays the required filing fee to the Economic Development Office.
2. The Economic Development Office (and/or, in appropriate instances, an outside consultant selected by the City) makes analysis of the costs and benefits of such exemption, after which the Economic Development Office may authorize the placing

of the application on the City Council agenda.

3. The City Clerk publishes required notice of the hearing and sends written notice of the hearing to the Sedgwick County Commission and U.S.D. 259 or other appropriate unified school board, depending upon location of the project.

4. The City Council reviews the analysis of costs and benefits and receives comments from the applicant, affected taxing districts, and the general public. At the conclusion of the hearing, the City Council will take formal action on the application. Approval of an EDX exemption shall be in the form of an ordinance. Approval of an IRB exemption shall be in the form of a letter of intent to issue industrial revenue bonds.

5. Once the property subject to an approved exemption has been constructed or acquired, the applicant will file the Board of Tax Appeals exemption application with the County Appraiser after review by the City. The applicant will also be responsible for filing the annual claim for exemption as required by state statute. The annual claim must include a signed statement from the City Clerk that the property continues to meet the terms and conditions of the exemption. The applicant will be responsible for submitting any evidence or participating in any hearing before the Board of Tax Appeals relative to the exemption. As a condition of the grant of exemption, the applicant must keep the City informed of any administrative or judicial proceedings involving the exemption. The City has the right but not the obligation to participate in such proceedings.

E. Terms and Conditions. In granting a tax exemption, the City Council may impose any terms or conditions as deemed necessary to fulfill the purpose and intent of this policy.

Section 8. Completion Review. Each tax exemption granted shall be subject to a review of project completion. This review shall be for the purpose of determining if the economic benefits were achieved, if the percent and term of exemption remain valid, if the business is in compliance with any established terms or conditions. In the event the capital investment project has not been completed, the review status shall be considered to be in-progress and no tax exemption shall be granted. If the capital investment project is complete but the employment goal has not been reached and hiring remains active, the applicant business may choose to be considered in-progress and receive no tax exemption or be considered partially complete and receive a one-time prorated tax exemption for the subject year. A project shall be considered complete if more than 18 months have elapsed since initial approval of the tax exemption ordinance.

A. Filing Date. The application for completion review shall be filed on

an annual basis no later than January 15 of each year until the project has been completed.

B. Business Information. The recipient business shall provide information pertaining to the number of full-time permanent jobs created as a result of the project, the actual wages/earnings paid on those full-time permanent jobs, the actual amount of capital invested in the project, the ongoing nature of business activities, a sworn affidavit signed by the owner of the business, and any other data as may reasonably be requested.

C. Review Process. The Economic Development Office will review the application for compliance with the original City Council approval criteria. If the project has been developed in accordance with the approval, the Economic Development Office will issue a certification of compliance for the tax exemption. An exemption claim form filed by the property owner with the County Appraiser shall include a written statement, signed by the City Clerk, that the property meets all terms and conditions established as a condition of granting the exemption.

D. Revocation. The City Council reserves the right to revoke a granted tax exemption, or impose additional payments in lieu of taxes, due to submittal of a fraudulent application, failure to submit the completion review application and supporting information, failure to meet qualifying criteria, or failure to comply with established terms or conditions. Failure to produce the stated economic benefits will result in a reduction or loss of tax exemption.

Section 9. Monitoring Review. Following receipt of certification of compliance, each tax exemption granted shall be subject to an annual monitoring review of business status. This review shall be for the purpose of determining if the business continues to meet eligibility criteria and remains in compliance with any established terms or conditions.

A. Filing Date. The application for monitoring review shall be filed on an annual basis no later than January 15 of each year for the term of the exemption.

B. Business Information. The recipient business shall provide information pertaining to the ongoing nature of business activities, total monthly employment, the increase in full-time permanent employment as a result of the tax exemption, the amount of wages/earnings paid to those new full-time permanent employees, any change in majority ownership of the business and any other data as may reasonably be requested.

C. Review Process. The Economic Development Office will review the application and, unless ineligibility or noncompliance is evident, shall direct the City Clerk to issue a certificate of compliance. In the

alternative, the Economic Development Office shall submit a report to the City Council for their determination of compliance.

D. Certification. If compliance is deemed to exist, the exemption claim form filed by the property owner with the County Appraiser shall include a written statement, signed by the City Clerk, that the property continues to meet all terms and conditions established as a condition of granting the exemption.

E. Phase In. If the expansion is phased in over a period of years (up to three years), the exemption may be approved for the entire expansion project. At the end of that period, should the applicant not have met all of the conditions stated in the application, a new exemption will be calculated based on the actual performance and applied retroactively to the entire three-year period and utilized to adjust the exemption percentage for the fourth year.

F. Revocation. The City Council reserves the right to revoke a granted tax exemption, or impose additional payments in lieu of taxes, due to submittal of a fraudulent application, failure to submit the monitoring review application and supporting information, failure to meet qualifying criteria, or failure to comply with established terms or conditions.

Section 10. Confidentiality. All applications and records pertaining to a formal tax exemption request shall be subject to the provisions of the Kansas Open Records Act.

Section 11. Amendments. The City Council reserves the right to amend, revoke, change or otherwise modify this policy from time to time to promote the best interests of the City of Wichita.

Section 12. Repeal of Prior Resolution. The Resolution No. R-98-152, adopted April 21, 1998, pertaining to the matters addressed herein, is hereby repealed.

Section 12. Effective Date. This policy shall apply to all applications for tax exemption submitted on or after the date of adoption.

Approved by the Wichita City Council this 17th day of August, 1999.

Bob Knight, Mayor

ATTEST:

Patricia L. Burnett, City Clerk

Approved as to Form:

Gary E. Rebenstorf, City Attorney